}			
1	EDMUND G. BROWN JR., Attorney General of the State of California JAMES M. LEDAKIS Supervising Deputy Attorney General RON ESPINOZA, State Bar No. 176908		
2			
3			
4	Deputy Attorney General 110 West "A" Street, Suite 1100		
5	San Diego, CA 92101		
6	P.O. Box 85266 San Diego, CA 92186-5266		
7	Telephone: (619) 645-2100 Facsimile: (619) 645-2061		
8	Attorneys for Complainant		
9	BEFORE THE BOARD OF REGISTERED NURSING DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA		
10			
11			
12	In the Matter of the Accusation Against:	Case No. 2010-29	
13	MARCUS KENT BROCK 2825 East 7th Street, Apt. 9	ACCUSATION	
14	Long Beach, CA 90804		
15	Registered Nurse License Number 486660		
16	Respondent.		
17			
18	Complainant alleges:		
19	<u>PARTIES</u>		
20	1. Heidi J. Goodman (Complainant)	1. Heidi J. Goodman (Complainant) brings this Accusation solely in her	
21	official capacity as the Assistant Executive Officer of the Board of Registered Nursing,		
22	Department of Consumer Affairs.		
23	2. On or about March 31, 1993, the	e Board of Registered Nursing issued	
24	Registered Nurse License Number 486660 to Marcus Kent Brock (Respondent). The Registered		
25	Nursing license was in full force and effect at all times relevant to the charges brought herein, and		
26	will expire on February 28, 2011, unless renewed.		
27	1 //		
28	<i>\ \ \ \ \ </i>		
	u		

<u>JURISDICTION</u>

- 3. This Accusation is brought before the Board of Registered Nursing
 (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

 4. Section 2750 of the Code provides, in pertinent part, that the Board may
 - discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.
 - 5. Section 2764 of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license. Under section 2811(b) of the Code, the Board may renew an expired license at any time within eight years after the expiration.
 - 6. Section 2761 of the Code states:

"The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

- "(a) Unprofessional conduct, which includes, but is not limited to, the following:
- "(f) Conviction of a felony or of any offense substantially related to the qualifications, functions, and duties of a registered nurse, in which event the record of the conviction shall be conclusive evidence thereof.
 - \$1 57

". . . .

7. Section 482 of the Code states:

"Each board under the provisions of this code shall develop criteria to evaluate the rehabilitation of a person when:

- "(b) Considering suspension or revocation of a license under Section 490.
- "Each board shall take into account all competent evidence of rehabilitation furnished by the applicant or licensee."

8. Section 490 of the Code states:

"(a) In addition to any other action that a board is permitted to take against a licensee, a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

"(b) Notwithstanding any other provision of law, a board may exercise any authority to discipline a licensee for conviction of a crime that is independent of the authority granted under subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the licensee's license was issued.

"(c) A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code.

"(d) The Legislature hereby finds and declares that the application of this section has been made unclear by the holding in *Petropoulos* v. *Department of Real Estate* (2006) 142 Cal.App.4th 554, and that the holding in that case has placed a significant number of statutes and regulations in question, resulting in potential harm to the consumers of California from licensees who have been convicted of crimes. Therefore, the Legislature finds and declares that this section establishes an independent basis for a board to impose discipline upon a licensee, and that the amendments to this section made by Senate Bill 797 of the 2007 -08 Regular Session do not constitute a change to, but rather are declaratory of, existing law."

9. Section 493 of the Code states:

"Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to

the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact, and the board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, and duties of the licensee in question.

"As used in this section, 'license' includes 'certificate,' 'permit,' 'authority,' and 'registration."

- 10. California Code of Regulations, title 16, section 1445, states:
- "
- "(b) When considering the suspension or revocation of a license on the grounds that a registered nurse has been convicted of a crime, the board, in evaluating the rehabilitation of such person and his/her eligibility for a license will consider the following criteria:
 - "(1) Nature and severity of the act(s) or offense(s).
 - "(2) Total criminal record.
 - "(3) The time that has elapsed since commission of the act(s) or offense(s).
- "(4) Whether the licensee has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee.
- "(5) If applicable, evidence of expungement proceedings pursuant to Section 1203.4 of the Penal Code.
 - "(6) Evidence, if any, of rehabilitation submitted by the licensee."
 - 11. California Code of Regulations, title 16, section 1444, states:
- "A conviction or act shall be considered to be substantially related to the qualifications, functions or duties of a registered nurse if to a substantial degree it evidences the present or potential unfitness of a registered nurse to practice in a manner consistent with the public health, safety, or welfare. Such convictions or acts shall include but not be limited to the following:
- "(a) Assaultive or abusive conduct including, but not limited to, those violations listed in subdivision (d) of Penal Code Section 11160.

- 11		
1	"(b) Failure to comply with any mandatory reporting requirements.	
2	"(c) Theft, dishonesty, fraud, or deceit.	
3	"(d) Any conviction or act subject to an order of registration pursuant to Section	
4	290 of the Penal Code."	
5	12. Section 11160, subdivision (d) of the Penal Code, states:	
6	"For the purposes of this section, 'assaultive or abusive conduct' shall	
7	include any of the following offenses:	
8	"(1) Murder, in violation of Section 187.	
9	"(2) Manslaughter, in violation of Section 192 or 192.5.	
10	"(3) Mayhem, in violation of Section 203.	
11	"(4) Aggravated mayhem, in violation of Section 205.	
12	"(5) Torture, in violation of Section 206.	
13	"(6) Assault with intent to commit mayhem, rape, sodomy, or oral copulation,	
14	in violation of Section 220.	
15	"(7) Administering controlled substances or anesthetic to aid in commission of	
16	a felony, in violation of Section 222.	
17	"(8) Battery, in violation of Section 242.	
18	"(9) Sexual battery, in violation of Section 243.4.	
19	"(10) Incest, in violation of Section 285.	
20	"(11) Throwing any vitriol, corrosive acid, or caustic chemical with intent to	
21	injure or disfigure, in violation of Section 244.	
22	"(12) Assault with a stun gun or taser, in violation of Section 244.5.	
23	"(13) Assault with a deadly weapon, firearm, assault weapon, or machinegun, or	
24	by means likely to produce great bodily injury, in violation of Section 245.	
25	"(14) Rape, in violation of Section 261.	
26	"(15) Spousal rape, in violation of Section 262.	
27	"(16) Procuring any female to have sex with another man, in violation of	
28	Section 266, 266a, 266b, or 266c.	

- 11		
1	"(17) Child abuse or endangerment, in violation of Section 273a or 273d.	
2	"(18) Abuse of spouse or cohabitant, in violation of Section 273.5.	
3	"(19) Sodomy, in violation of Section 286.	
4	"(20) Lewd and lascivious acts with a child, in violation of Section 288.	
5	"(21) Oral copulation, in violation of Section 288a.	
6	"(22) Sexual penetration, in violation of Section 289.	
7	"(23) Elder abuse, in violation of Section 368.	
8	"(24) An attempt to commit any crime specified in paragraphs (1) to (23),	
9	inclusive."	
10	COST RECOVERY	
11	13. Section 125.3 of the Code provides, in pertinent part, that the Board may	
12	request the administrative law judge to direct a licentiate found to have committed a violation or	
13	violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation	
14	and enforcement of the case.	
15	CAUSE FOR DISCIPLINE	
16	(April 29, 2009 Criminal Conviction-Burglary on November 15, 2006)	
17	14. Respondent is subject to disciplinary action under Code sections 490 and	
18	2761, subdivision (f), for a criminal conviction that is substantially related to his qualifications,	
19	functions, and duties as a registered nurse. The circumstances are as follows:	
20	a. On or about April 29, 2009, in a criminal proceeding entitled People of the	
21	State of California v. Marcus Kent Brock, in Riverside County Superior Court, Case No.	
22	INF059706, Respondent was convicted by his plea of guilty to a violation of Penal Code section	
23	459 [burglary], a felony.	
24	b. On or about April 29, 2009, Respondent was sentenced as follows:	
25	serve two years in state prison.	
26	c. The circumstances that led to the conviction were that on or about	
27	November 15, 2006, in the County of Riverside, State of California, Respondent committed a	
28	hurglary in violation of Penal Code section 459	

PRAYER

	111111111
WHERI	EFORE, Complainant requests that a hearing be held on the matters herein
alleged, and that follow	ring the hearing, the Board of Registered Nursing issue a decision:
1.	Revoking or suspending Registered Nurse License Number 486660 issued
to Marcus Kent Brock;	

- Ordering Marcus Kent Brock to pay the Board of Registered Nursing the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and
 - 3. Taking such other and further action as deemed necessary and proper.

DATED: 7/22/09

Heidi J. Goodman

Assistant/Executive Officer Board of Registered Nursing Department of Consumer Affairs

State of California Complainant

SD2009804152 80380765.wpd